

Brief

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Issues Facing the

This issue of *In Brief* features a discussion of important issues facing the 77th Legislature identified by the Senate Research Center staff. Topping the list is redistricting, which will be challenging and time-consuming for legislators. There are other important issues, however. They include water management, cleaning up the air in non-attainment areas, health insurance and salary issues for teachers and state employees, budget allocation with a smaller surplus than in 1999, and prison overcrowding, to name just a few of the many policy questions the legislature will be called upon to solve.

The information in this issue is intended to serve as a quick-reference guide to issues facing the 77th Legislature. It is not a comprehensive list of issues, but rather an outline of broad categories and topics of concern that have arisen during the interim. The list is not intended to be an endorsement of any issue by the Senate Research Center.



Issues facing the 77th Texas Legislature



Redistricting

Following the Census 2000, the 77th Legislature will redraw state senatorial and house districts. Redistricting can involve a number of controversial issues, including whether to use the census actual count and or “statistical sampling” (in which the actual count is adjusted to correct for undercounted populations) in drawing districts, compliance with the Voting Rights Act of 1965, which principles the legislature will use when redrawing districts (for example, compactness, contiguity, and the preservation of communities of interest), balancing urban and rural interests, and taking into account population shifts and possible future growth.

Border Affairs

Intermodal Transportation

Anticipating the long-term intermodal transportation needs of the Texas-Mexico border region, the 77th Legislature will discuss the how to best facilitate economic development and international trade in an efficient and safe manner.

NAFTA-Related Issues

Given the dramatic increase in commerce, the 77th will look into effective means of utilizing human resources along the border. Developments in this effort might include providing specialized education and training in emerging NAFTA-related industries, e.g., high-tech and healthcare manufacturing.

Environment

The 2001 Legislature will also address the Border Region’s environmental concerns, especially the need for adequate water and wastewater systems. This includes determining the impact on health conditions as a result of increases in population and a history of being under-served.

Health

Similarly, health problems endemic to the Border Region will be reviewed in light of possible joint efforts

between Texas and the adjoining Mexican states. Access to and availability of health care services for residents of the Border Region will be considered, especially with regard to immunizations and preventative health care.

Budget and Tax

State Employee Pay Raise

The state employee turnover rate was more than 17 percent in 1999, and a report by the State Auditor recommends decreasing that rate by increasing the pay of state workers. Alwin’s recommended raise of either \$200 or 10 percent per month would still leave state salaries seven percent below those of private workers and would cost nearly \$1 billion. Several state leaders support a raise but question whether the state can afford the high price tag.

Criminal Justice

Mental Health Issues

The legislature will review the relationship between law enforcement and mental health agencies that share information regarding individuals who are identified as or considered a risk to public safety. The 77th will assess the placement of such individuals within the criminal justice system.

Correctional Alternatives

Alternatives to adult and juvenile correctional facilities will be reviewed, as will the statutory purpose of current state, local, and privately owned adult and juvenile correctional corrections facilities.

Expunction of Criminal Records

The legislators will also discuss current procedures and policies regarding the expunction of criminal records. Different entities, e.g., local law enforcement, court clerks, or the Department of Public Safety, maintain such data for public access. The ability of information keepers to sufficiently protect personal privacy rights will also be reviewed.

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Staffing and Training

Many issues surrounding criminal justice system staffing and training will be deliberated. Extending the ability to investigate “cold crimes” with up-to-date technology is at the forefront, as is the efficient processing and continued use of DNA evidence.

Safety Issues

Legislators will also consider the monitoring of and compliance with regulations that ensure the safety for security personnel and offenders by the Commission on Jail Standards, the Juvenile Probation Commission, and the Youth Commission, as well as employment requirements and methods utilized to retain effective security personnel.

Crimes

New topics may include legislation to address expanding protection against hate crimes, “racial profiling,” life without parole, execution of the mentally retarded, capacity concerns, indigent criminal defense, and parole officers.

The 77th will likely make adjustments to prior legislation related to street gangs, the Board of Pardons and Paroles, functions of the Department of Criminal Justice, the Department of Public Safety, the Correctional Managed Health Care Advisory Committee, and the Texas Commission on Private Security.

DNA Evidence

The use of DNA (deoxyribonucleic acid) to identify and convict criminals and to exonerate innocent persons has become accepted throughout the criminal justice system. States have passed or are considering laws allowing for post-conviction DNA testing under certain circumstances. The effectiveness of DNA testing is also causing states to either extend or remove their statutes of limitations concerning rape and sexual assault. This would allow a DNA sample taken from a victim of such a crime to be used to prosecute an offender many years after the crime was committed. Similar legislation regarding the use of DNA evidence may be introduced this coming session.

Juvenile Justice

Young Children Committing Crimes

There have been instances in Texas in which children under 10 years of age commit acts of violence, such as sexual assault and even murder. Currently, problems arising from the behavior of children this age are handled through the child welfare system rather than the juvenile justice system. Enhancing the types and comprehensiveness of the services available to these young children, including intensive counseling and supervision, may be considered.

Abortion

The 76th Legislature enacted the Texas Parental Notification Act (Act), which requires parental notification before a minor may obtain an abortion. It also provides for judicial bypass of the notification requirement if the minor meets certain criteria. The Texas Supreme Court has, in a series of decisions, sought to interpret provisions of the Act. The court has been divided and dissenting justices, as well as a number of legislators, have asserted that the majority did not set a high enough standard regarding when a minor may obtain judicial bypass. Legislation may be introduced seeking to clarify the Act and set more stringent standards.

Economic Development

Availability of Capital

Legislation addressing the availability of business capital was discussed during the interim, including the creation of certified capital companies, the reauthorization of the Texas Product Development Fund, and the Texas Small Business Incubator Fund. Legislation is possible on investment tax credits and incentives to encourage greater commercialization of university research.

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Federal FSMA

The monitoring of the federal Financial Services Modernization Act was recommended, which could produce legislation now that banking, insurance, and securities services are not restricted to their respective industries.

9-1-1 Services

In addition, the creation of regional 9-1-1 call centers was recommended during the interim.

Public Education

Teacher's Issues

Teacher's issues will dominate the education arena. Addressing teacher attrition and shortages, a pay raise, and state-paid health insurance for school employees that is comparable in cost and benefits to the state employee program, will keep legislators' and prospective teachers' attention.

Programs to improve teaching and the supply of teachers will be prominent issues as well. Some possible solutions include:

- ✦ mentoring programs for new teachers;
- ✦ focusing on improving math teaching skills, similar to the reading academy initiative from last session;
- ✦ and expanding the alternative certification programs to attract post-baccalaureate, would-be teachers.

Curriculum

Curriculum attracted attention this interim, especially the recommended high school curriculum; support grew for making it the default curriculum for all high school freshmen, but teacher shortages in math and science will limit implementation of this program, as it has in the Houston ISD. Bilingual and limited-English-proficient programs will be targeted to improve learning and assess students' progress. Early childhood development proposals include requiring kindergarten for five-year olds.

School finance

School finance issues will include funding of facilities for fast-growth districts, increasing funding for the existing instructional-facilities bonds, helping small/sparse districts, and compensating districts with sharp declines in enrollment. Some will want to revise or eliminate recapture from property-wealthy districts, but a change probably would require increasing state support for most other districts to stay within Texas Supreme Court and Legislative Budget Board guidelines. Management of the Permanent School Fund will come up for review and possible changes as a result of the questions raised about investment advisors and process.

Higher Education

Formula Funding

Formula funding will engage many legislators with colleges and universities in their districts. The Texas Higher Education Coordinating Board recommended a 16 percent (\$925 million) increase in funding for all institutions of higher education (IHEs). Dealing with IHE faculty and staff salaries and benefits could be nearly as contentious as with their public-school counterparts. Increasing tuition revenue bonds for facility construction will have supporters among fast-growing IHEs and their legislators.

Access

Access to higher education will be a central issue. Possible steps to increase access include:

- ✦ expanding and refining TEXAS Grant and Teach for Texas grant programs;
- ✦ increasing financial aid and making college more affordable;
- ✦ integrating the public education and higher education systems so that the recommended high school curriculum meshes with college expectations of freshman preparedness;
- ✦ improving minority- and low-income student recruitment and retention to increase the graduation rate for these groups;

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- ✦ closing the gaps in achievement, enrollment and graduation of minority groups; and
- ✦ distance learning.

Accountability

Accountability measured by student testing, a tool that worked in public schools, may be adopted to measure the output of colleges and universities.

Health and Human Services

Medical Privacy

One issue facing legislators includes reviewing who should have access to personal medical information. Specific medical privacy issues likely to be considered by the 77th Legislature include using health information in employment practices, using medical information for pharmaceutical research, the extent to which a patient must consent to releasing medical information, managing who has access to large medical databases, and relying on personal medical records to track certain diseases.

Long Term Care

The 77th Legislature is likely to revisit S.B. 190, passed by the 76th Legislature, in examining the collection, use, and reliability of state-produced nursing home surveys. Nursing home advocacy groups are likely to seek a decrease in the state caps placed on punitive damages because of what they contend is a relationship between the fiscal impact punitive damages have had on nursing home bankruptcies and liability insurance premiums. In addition, nursing home advocates are likely to seek an increase in the rate of Medicaid reimbursements for their facilities. The legislature is also likely to address expanding the Medicaid program to include preventive dental services for nursing home residents which will require a federal waiver. In addition, the legislature is likely to address whether for-profit nursing facilities can purchase liability insurance from the Joint Underwriting Association (JUA).

Children's Health Issues

The legislature will continue to monitor the Children's Health Insurance Program (CHIP) by seeking to provide more opportunities to enroll eligible children in the program. It will also focus on child immunization issues in discussing the relationship between private health providers and the state in promoting enrollment and participation in the Vaccines for Children (VCF) program. The program was created in 1993 as part of the federal Omnibus Budget Reconciliation Act (OBRA) to increase childhood immunization rates.

Children's Human Services Issues

Several interim committee recommendations focusing on children are likely to be addressed during the session. Those issues include revising the Medicaid eligibility qualifications for children with special health care needs, examining the state's child care regulatory authority, investigating the foster care system, and adopting a 12-month continuous eligibility for children's Medicaid. The legislature is also likely to address the issue of the Department of Human Services eliminating face-to-face interview requirements when assessing children's Medicaid eligibility.

General Human Services Issues

The Texas Administrative Code, along with the federal Health Care Finance Administration (HCFA), currently develop rules governing when health facilities may use restraints, seclusions, and psychoactive medications. One of the issues facing the 77th Legislature will be whether to create statutory requirements on the use of restraints, seclusions, and psychoactive medications in child care facilities, nursing homes, intermediate care facilities, and mental health facilities. In addition, the legislature is likely to address the issue of implementing procedures to ensure that people with disabilities residing in institutions, or at risk of such a placement, have access to information about the full range of care options available to them.

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Child Support

In general, the Office of the Attorney General's Child Support Division is, for the first time in a number of years, not under the gun for its performance in collecting child support and responding to client needs. The legislature will, however, have to address the funding of the agency. Texas' child support division relies heavily on retained collections for funding (under a retained collection system, the Child Support Program keeps some of the child support money it collects for those on welfare). The shrinking welfare rolls have resulted in shrinking funding for the child support division.

Promoting Responsible Fatherhood

Recognition of the critically important role a father plays in the development of a child, beyond providing monetary support, is growing. Policy makers may need to look at ways to encourage a father's participation in a child's life. The more involved a father can stay in a child's life, the more likely he will be to support the child monetarily and emotionally. Fatherhood initiatives can take varied forms but may include mediation, counseling, job training, education, development of parenting plans, and visitation enforcement.

Disproportionate Share Hospital Funding (DSH)

Issues emphasized will be data quality from hospitals and HMOs regarding uninsured patients. Other related issues are the complexity of the program and the formula for distribution.

Intergovernmental Relations

Public Construction Projects

The Senate Interim Committee on Intergovernmental Relations compared the "design-build" method of procurement with the traditional "design-bid-build" method in regard to construction of public roads and bridges. With advantages to the design-build method being faster completion, below-budget costs, and well-built projects, the 77th Legislature will consider

authorizing the Texas Department of Transportation, the Texas Turnpike Authority, and the Texas Department of Criminal Justice to use the design-build method of procurement.

Councils of Government

Building upon the success of 1999 legislation, the 77th Legislature will hear recommendations to further enhance and improve accountability of Councils of Government (COGs, voluntary associations of local government that perform comprehensive regional planning and coordination).

Residential Subdivision Development

The degree to which counties and municipalities have authority to regulate the development of residential subdivisions continues to be important. The authority of counties and their authority in extraterritorial jurisdictions (ETJs), where city and county regulations may conflict, will be subjects of interest.

Municipal Annexation

The 76th Legislature passed a comprehensive rewrite of Texas' municipal annexation statutes, and during the upcoming session legislators will be presented with information concerning the bill's implementation and suggested changes.

Affordable Housing

Affordable housing is an issue of great concern to everyone as Texas continues to grow exponentially. The 77th Legislature will concentrate on interim studies on the efficacy of state agencies to meet the growing demand for public housing.

Natural Resources

Water

Groundwater management is a dominant water issue as the state's population continues to expand rapidly and demand for water in urban areas increases. Interbasin transfers, water marketing, and the rule of

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capture are volatile issues surrounding the basic tension between small, rural communities preoccupied with protecting their water supplies and urban areas contending with the urgent need to plan for future water needs.

Air

Areas in Texas designated as nonattainment must comply with the Federal Clean Air Act by 2007, or risk federal sanctions. This year the Texas Natural Resource Conservation Commission (TNRCC) approved recommended changes to the State Implementation Plan (SIP) for both the Dallas and Houston metropolitan areas. However, the state faces heavy opposition to many of its proposals, such as the proposed ban on the use of heavy-duty construction equipment from 6 a.m. to 12 noon between April and October, proposed speed limit reductions, and the 88- to 90-percent reduction in nitrogen oxide emissions from major industrial point source emissions. The use of alternative fuels will probably be considered as one way to improve air quality.

Oil and Gas

Abandoned wells and the state's continuing battle to plug them is an important subject for the industry as well as the state. The Texas Railroad Commission is proposing the requirement of financial assurance, in the form of bonds or letters of credit, from all oil and gas operators for every well in the state. Other issues include an exemption from excise severance taxes for small independents producing fewer than 100 barrels, and a graduated excise severance tax for small independents who produce more than 100 barrels a day. As the state's oil and gas pipeline structure ages, more and more attention will go to the issue of pipeline safety.

Low-level Radioactive Waste

Management of low-level radioactive waste is an important concern for the State of Texas as it considers options such as permanent below-ground disposal, permanent above-ground disposal, processing and short-term storage, and assured isolation.

Agriculture

Lawmakers will be developing a sound agricultural policy to carry Texas into the 21st century with emphasis on maintaining Texas agriculture's economic, cultural, and historic importance. Water availability will be a critical agricultural issue, as will redistricting. Demographic studies show that 87 percent of Texans now live in urban areas, which leaves those in rural areas concerned about adequate political representation.

Regulatory

Electric Deregulation

No major legislation is expected, given the passage of S.B. 7 by the 76th Legislature, although monitoring the progress of deregulation is expected. With open competition beginning in 2002 and in view of California's troubled deregulation experience, enhancing legislation could be introduced in the upcoming session. Additionally, the System Benefit Fund established by S.B. 7 could see clarifying legislation.

Telecommunications

No major legislation is expected, given the passage of S.B. 560 in the last session, though progress is being monitored, as are final implementation efforts on the national telecommunications law. Advanced telecommunications services in rural communities could be an issue. Interim legislative recommendations address Universal Service charges and the prevention of double taxation on the public utility gross receipts tax, telecommunications franchise tax, and the Telecommunications Infrastructure Fund assessment.

State Affairs

Insurance

A bill similar to last session's S.B. 956 will probably be reintroduced to review and reevaluate current insurance licensing statutes, and address other problems and changes needed.

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Payday Lending

The Texas Senate's Economic Development Committee and the Sunset Advisory Commission have called for a new law to broaden the definition of a loan to include sale-leaseback agreements. In some cases, payday lenders partner with national banks to keep from falling under state regulations, or switch to sale-leaseback companies that are in a "gray legal area." A sale-leaseback company buys a customer's appliance in return for \$200 or less, charging a fee until the money is repaid. To date, no court has clarified whether this arrangement is a loan subject to state rules—or an unfettered lease.

Transportation

Recognizing the worsening nature of traffic congestion, the 77th Legislature is expected to consider innovative ideas to improve Texans' quality of life. Discussion will likely include a variety of funding and road construction options to get the traffic moving, including bonds, toll roads, design-build projects, and pavement warranties.

The legislators, with special attention to the Texas-Mexico border region, will also focus on the NAFTA-related trade corridors. Transportation of all types will be considered to address the impact NAFTA-related trade has made on highways, farm-to-market roads, turnpikes, mass transit, aviation, railroads, and waterways.

The 2001 session is also faced with the task of evaluating the state's commercial trucking industry. Compliance and enforcement of truck safety laws, particularly those regarding overweight and oversize vehicles, will be at the forefront of the debate.

Veterans and Military Affairs

Building more veterans' homes and a veterans' hospital in the southern part of the state were notable concerns at hearings during the interim. Base closings and the future of closed facilities were substantial economic development concerns for affected areas. In addition, military officials testified at interim hearings that their operations require more roads, especially improved highway access to ports during times of crisis.

Sunset Advisory Commission

Some of the agencies facing Sunset review in the upcoming 77th include:

Texas Natural Resources Conservation Commission (TNRCC)

Issues to be addressed through the Sunset process include fee structure, treatment of radioactive waste materials and who will have ultimate regulatory authority, and inclusion of additional public members on policymaking bodies.

Texas Parks and Wildlife Department (TPWD)

Issues will include fees needed in order to support the vast system of public lands, encompassing some 1.4 million acres, and safeguarding assets of partner foundations to ensure strategic planning will be carried out as intended.

Texas Department of Housing and Community Affairs (TDHCA)

Two of Sunset's agencies under review were the subject of controversy due to outside circumstances. In the case of the TDHCA, legal constraints due to the federal indictment of a member of the board has led to postponing any final decision regarding the agency until later.

Texas Department of Economic Development (TDED)

TDED was placed on a two-year probation, and additional recommendations include moving the Smart Jobs program from under TDED's umbrella to the Texas Workforce Commission.

Other agencies under Sunset's purview include the **Railroad Commission**, the **Funeral Commission**, and the **Volunteer Firefighters**, who will be pushing for volunteer firefighters' pensions. **The General Services Commission** also will be scrutinized.